

SECOND REGULAR SESSION

SENATE BILL NO. 738

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR NODLER.

Pre-filed December 1, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

3345S.011

AN ACT

To repeal sections 640.710, 643.151, and 644.076, RSMo, and to enact in lieu thereof three new sections relating to concentrated animal feeding operations, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 640.710, 643.151, and 644.076, RSMo, are repealed
2 and three new sections enacted in lieu thereof, to be known as sections 640.710,
3 643.151, and 644.076, to read as follows:

640.710. 1. The department shall promulgate rules regulating the
2 establishment, permitting, design, construction, operation and management of
3 class I facilities. The department shall have the authority and jurisdiction to
4 regulate the establishment, permitting, design, construction, operation and
5 management of any class I facility. Such rules may require monitoring wells on
6 a site-specific basis when, in the determination of the division of geology and land
7 survey, class IA concentrated animal feeding operation lagoons are located in
8 hydrologically sensitive areas where the quality of groundwater may be
9 compromised. Such rules and regulations shall be designed to afford a prudent
10 degree of environmental protection while accommodating modern agricultural
11 practices.

12 2. **If a decision on any application concerning a concentrated**
13 **animal feeding operation cannot be rendered by the department within**
14 **ninety days of the receipt of the completed application, the director**
15 **shall establish, publish, and post on the department website a time line**
16 **under which such application shall be considered and**
17 **decided. Immediately following establishment of the time line, the**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

18 **director shall arrange for its publication for a period of ten days in the**
19 **newspaper of each county or incorporated city, town, or village to be**
20 **affected by the permit application. The time line shall be posted on the**
21 **department's website for the duration of time the application is open**
22 **for consideration. The director may only amend the time line once. In**
23 **the event that such an amendment is made, the director shall publish**
24 **the new time line immediately after that decision has been made, in the**
25 **same manner as described above.**

26 **3.** Except as provided in subsections 3 and 4 of this section, the
27 department shall require at least but not more than the following buffer distances
28 between the nearest confinement building or lagoon and any public building or
29 occupied residence, except a residence which is owned by the concentrated animal
30 feeding operation or a residence from which a written agreement for operation is
31 obtained:

32 (1) For concentrated animal feeding operations with at least one thousand
33 animal units, one thousand feet;

34 (2) For concentrated animal feeding operations with between three
35 thousand and six thousand nine hundred ninety-nine animal units inclusive, two
36 thousand feet; and

37 (3) For concentrated animal feeding operations of seven thousand or more
38 animal units, three thousand feet.

39 **[3.] 4.** All concentrated animal feeding operations in existence as of June
40 25, 1996, shall be exempt from the buffer distances prescribed in subsection 2 of
41 this section. Such distances shall not apply to concentrated animal feeding
42 operations which have received a written agreement which has been signed by all
43 affected property owners within the buffer distance.

44 **[4.] 5.** The department may, upon review of the information contained in
45 the site plan including, but not limited to, the prevailing winds, topography and
46 other local environmental factors, authorize a distance which is less than the
47 distance prescribed in subsection 2 of this section. The department's
48 recommendation shall be sent to the governing body of the county in which such
49 site is proposed. The department's authorized buffer distance shall become
50 effective unless the county governing body rejects the department's
51 recommendation by a majority vote at the next meeting of the governing body
52 after the recommendation is received.

53 **[5.] 6.** Nothing in this section shall be construed as restricting local

54 controls.

643.151. 1. It is unlawful for any person to cause or permit any air
2 pollution by emission of any air contaminant from any air contaminant source
3 located in Missouri, in violation of sections 643.010 to 643.190, or any rule
4 promulgated by the commission.

5 2. No person who knows or should know of the existence of such rules may
6 cause or permit any air pollution by emission of any air contaminant source
7 located outside Missouri, and which emissions enter Missouri in excess of the
8 emission control regulations applicable to the portion of Missouri where the air
9 contaminant enters the state.

10 3. In the event the commission determines that any provision of sections
11 643.010 to 643.190, or the rules promulgated hereunder, permits issued, or any
12 final order or determination made by the commission or the director is being
13 violated, the commission may cause to have instituted a civil action in any court
14 of competent jurisdiction for injunctive relief to prevent any further violation or
15 for the assessment of a penalty not to exceed ten thousand dollars for each
16 violation per day for each day, or part thereof, the violation continues to occur,
17 or both, as the court may deem proper. A civil monetary penalty under this
18 section shall not be assessed for a violation where an administrative penalty was
19 assessed under section 643.085. The commission may request the attorney
20 general or other counsel to bring such action in the name of the people of the
21 state of Missouri. Process may be served in any manner provided by chapter 506,
22 RSMo, including but not limited to sections 506.510 and 506.520, RSMo. Suit
23 may be brought in any county where the defendant's principal place of business
24 is located or where the air contaminant source is located or where the air
25 contaminants enter the state of Missouri. Any offer of settlement to resolve a
26 civil penalty under this section shall be in writing, shall state that an action for
27 imposition of a civil penalty may be initiated by the attorney general or a
28 prosecuting attorney representing the department under authority of this section,
29 and shall identify any dollar amount as an offer of settlement which shall be
30 negotiated in good faith through conference, conciliation and persuasion.

31 4. **Any concentrated animal feeding operation or recycling**
32 **company that converts animal parts into petroleum that the**
33 **commission or the director determines to be in persistent violation of**
34 **the provisions of this section or any odor rule promulgated by the**
35 **department shall forfeit any permits issued by the department under**

36 sections 640.700 to 640.755, RSMo, this chapter, or chapter 644, RSMo,
37 until such time that the concentrated animal feeding operation or
38 recycling company that converts animal parts into petroleum
39 successfully reapplies for a new permit. For the purposes of this
40 subsection, the term "persistent violation" shall mean any concentrated
41 animal feeding operation or recycling company that converts animal
42 parts into petroleum that has been found by the commission or the
43 director to have violated the provisions of this section at least six times
44 during any twelve-month period or at least twelve times during any
45 thirty-six month period.

46 5. During any thirty-six month period, any concentrated animal
47 feeding operation or recycling company that converts animal parts into
48 petroleum that the commission or director has found to have violated
49 the provisions of this section on more than one occasion shall be
50 subject to a surcharge in addition to the civil penalties assessed under
51 subsection 3 of this section. The surcharge shall be an amount equal
52 to the sum of the penalty assessed under subsection 3 of this section for
53 the current citation plus all the fines assessed against the violator
54 during the thirty-six month period prior to the date the citation was
55 issued.

56 6. The proceeds of any surcharge assessed under subsection 5 of
57 this section shall be deposited into the "Air Pollution Enforcement
58 Fund", which is hereby established and shall be administered by the
59 department. One half of all moneys in the fund shall be utilized
60 exclusively to enforce the provisions of this section and one half of all
61 moneys in the fund shall be transferred at least annually to the state
62 school moneys fund as established in section 166.051, RSMo, and
63 distributed to the public schools of this state in the manner provided
64 in section 163.031, RSMo.

65 7. Notwithstanding the provisions of section 33.080, RSMo,
66 moneys in the air pollution enforcement fund shall not revert to
67 general revenue. The state treasurer shall invest the moneys from the
68 fund in the same manner as other state funds are invested. Interest
69 accruing to the fund shall be deposited in the fund and shall not be
70 transferred to general revenue.

71 8. Any member of the commission or employee thereof who is convicted
72 of willful disclosure or conspiracy to disclose confidential information to any

73 person other than one entitled to the information under sections 643.010 to
74 643.190 is guilty of a class A misdemeanor and upon conviction thereof shall be
75 punished by a fine of not more than one thousand dollars.

76 [5.] 9. No liability shall be imposed upon persons violating the provisions
77 of sections 643.010 to 643.190 or any rule hereunder due to any violation caused
78 by an act of God, war, strike, riot or other catastrophe.

644.076. 1. It is unlawful for any person to cause or permit any discharge
2 of water contaminants from any water contaminant or point source located in
3 Missouri in violation of sections 644.006 to 644.141, or any standard, rule or
4 regulation promulgated by the commission. In the event the commission or the
5 director determines that any provision of sections 644.006 to 644.141 or standard,
6 rules, limitations or regulations promulgated pursuant thereto, or permits issued
7 by, or any final abatement order, other order, or determination made by the
8 commission or the director, or any filing requirement pursuant to sections
9 644.006 to 644.141 or any other provision which this state is required to enforce
10 pursuant to any federal water pollution control act, is being, was, or is in
11 imminent danger of being violated, the commission or director may cause to have
12 instituted a civil action in any court of competent jurisdiction for the injunctive
13 relief to prevent any such violation or further violation or for the assessment of
14 a penalty not to exceed ten thousand dollars per day for each day, or part thereof,
15 the violation occurred and continues to occur, or both, as the court deems proper.
16 A civil monetary penalty pursuant to this section shall not be assessed for a
17 violation where an administrative penalty was assessed pursuant to section
18 644.079. The commission, the chair of a watershed district's board of trustees
19 created under section 249.1150, RSMo, or the director may request either the
20 attorney general or a prosecuting attorney to bring any action authorized in this
21 section in the name of the people of the state of Missouri. Suit may be brought
22 in any county where the defendant's principal place of business is located or
23 where the water contaminant or point source is located or was located at the time
24 the violation occurred. Any offer of settlement to resolve a civil penalty pursuant
25 to this section shall be in writing, shall state that an action for imposition of a
26 civil penalty may be initiated by the attorney general or a prosecuting attorney
27 representing the department pursuant to this section, and shall identify any
28 dollar amount as an offer of settlement which shall be negotiated in good faith
29 through conference, conciliation and persuasion.

30 2. **Any concentrated animal feeding operation or recycling**

31 company that converts animal parts into petroleum that the
32 commission or the director determines to be in persistent violation of
33 the provisions of this section shall forfeit any permits issued by the
34 department under sections 640.700 to 640.755, RSMo, chapter 643,
35 RSMo, or chapter 644, until such time the concentrated animal feeding
36 operation or recycling company that converts animal parts into
37 petroleum successfully reapplies for a new permit. For the purposes of
38 this subsection, the term "persistent violation" shall mean any
39 concentrated animal feeding operation or recycling company that
40 converts animal parts into petroleum that the commission or the
41 director has found to have violated the provisions of this section at
42 least six times during any twelve-month period or at least twelve times
43 during any thirty-six month period.

44 3. During any thirty-six month period, any concentrated animal
45 feeding operation or recycling company that converts animal parts into
46 petroleum that the commission or director has found to have violated
47 the provisions of this section on more than one occasion shall be
48 subject to a surcharge in addition to the civil penalties assessed under
49 subsection 1 of this section. The surcharge shall be an amount equal
50 to the sum of the penalty assessed under subsection 1 of this section for
51 the current citation plus all the fines assessed against the violator
52 during the thirty-six month period prior to the date the citation was
53 issued.

54 4. The proceeds of any surcharge assessed under subsection 3 of
55 this section shall be deposited into the "Water Pollution Enforcement
56 Fund", which is hereby established and shall be administered by the
57 department. One half of all moneys in the fund shall be utilized
58 exclusively to enforce the provisions of this section, and one half of all
59 the moneys in the fund shall be transferred at least annually to the
60 state school moneys fund as established in section 166.051, RSMo, and
61 distributed to the public schools of this state in the manner provided
62 in section 163.031, RSMo.

63 5. Notwithstanding the provisions of section 33.080, RSMo,
64 moneys in the water pollution enforcement fund shall not revert to
65 general revenue. The state treasurer shall invest the moneys from the
66 fund in the same manner as other state funds are invested. Interest
67 accruing to the fund shall be deposited in the fund and shall not be

68 **transferred to general revenue.**

69 **6.** Any person who knowingly makes any false statement, representation
70 or certification in any application, record, report, plan, or other document filed
71 or required to be maintained pursuant to sections 644.006 to 644.141 or who
72 falsifies, tampers with, or knowingly renders inaccurate any monitoring device
73 or method required to be maintained pursuant to sections 644.006 to 644.141
74 shall, upon conviction, be punished by a fine of not more than ten thousand
75 dollars, or by imprisonment for not more than six months, or by both.

76 **[3.] 7.** Any person who willfully or negligently commits any violation set
77 forth pursuant to subsection 1 of this section shall, upon conviction, be punished
78 by a fine of not less than two thousand five hundred dollars nor more than
79 twenty-five thousand dollars per day of violation, or by imprisonment for not
80 more than one year, or both. Second and successive convictions for violation of
81 the same provision of this section by any person shall be punished by a fine of not
82 more than fifty thousand dollars per day of violation, or by imprisonment for not
83 more than two years, or both.

84 **[4.] 8.** The liabilities which shall be imposed pursuant to any provision
85 of sections 644.006 to 644.141 upon persons violating the provisions of sections
86 644.006 to 644.141 or any standard, rule, limitation, or regulation adopted
87 pursuant thereto shall not be imposed due to any violation caused by an act of
88 God, war, strike, riot, or other catastrophe.

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